

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, Colorado 80527-2400

Attorney Docket No.: 10004571-1

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REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks. Claims 1, 13, 16, 23, 26, 29, and 32-34 have been amended. Claim 31 has been canceled without prejudice or disclaimer of the subject matter therein. Support for the amendments may be found in canceled claim 31 and page 4, lines 5-7, page 8, lines 23-25, page 12, lines 19-21, page 17, lines 6-8, and page 20, lines 3-15 of the originally filed specification. Therefore, claims 1-30 and 32-37 are currently pending, of which claims 1, 13, 16, and 29 are independent.

No new matter has been introduced by way of the claim amendments; entry thereof is therefore respectfully requested.

Claims 1-11, 13-18, 23-24, and 26-28 were rejected under U.S.C. §102(c) as allegedly anticipated by Flavin (6,005,603) ("Flavin").

Claim 12 was rejected under U.S.C. §103(a) as allegedly being unpatentable over Flavin in view of SMPTE 309M-1999 ("SMPTE").

Claims 19-22 were rejected under U.S.C. §103(a) as allegedly being unpatentable over Flavin in view of Sequeira (2001/0000194) ("Sequeira").

Claim 25 was rejected under U.S.C. §103(a) as allegedly being unpatentable over Flavin.

Claims 29-37 were rejected under U.S.C. §103(a) as allegedly being unpatentable over Flavin in view of Reynolds et al (2001/0037500) ("Reynolds").

Examiner Interview Conducted

The Applicant's representative wishes to thank Examiner Hoye for the courtesies extended during the interview conducted on January 4, 2006. The Applicant's

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representative submitted a proposed amendment to Examiner Hoye, which more clearly described the embedded cues. During the interview the Applicant's representative explained the differences between the proposed amendment and the cited art of record, particularly Flavin (6,005,603). The Applicant's representative pointed out that the cues of the proposed amendment are embedded into the media stream with the media content. Therefore, the embedded cues can arrive at a user within the media stream with the media content. In contrast thereto, the announcements of Flavin are generated by a third party and sent to a user in a separate and independent stream from the media content. The Applicant's representative showed Examiner Hoye where Flavin disclosed sending the announcements and media content to the user over different networks, *i.e.*, the Internet and a television broadcast network, respectively. In the system of Flavin, the announcements arrive at an end user after the media content arrives at the end user in a different stream and then the announcements must be matched to the media content using timestamps. Therefore, the announcements of Flavin are not embedded in the media stream with the media content.

The Examiner agreed that Flavin appeared not to teach the features of the proposed amendment, particularly, the cues embedded in the media stream with the media content. Examiner Hoye also indicated that a further review would have to be conducted before a determination could be made concerning the allowability of the application.

Claim Rejection Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of

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the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1-11, 13-18, 23-24, and 26-28 were rejected under U.S.C. §102(e) as allegedly anticipated by Flavin. This rejection is respectfully traversed because Flavin fails to disclose each and every element of independent claims 1, 13, and 16 and the claims that depend therefrom.

Independent claims 1, 13, and 16 describe providing media content or a media program in a media stream. Claims 1, 13, and 16 recite a "media stream," which includes a "cue embedded in the media stream with the media content", which is not taught by Flavin. Support for this amendment may be found in page 4, lines 5-7, page 8, lines 23-25, and page 12, lines 19-21 of the originally filed specification. These passages describe the media stream, according to one possible embodiment, as a plurality of data packets where the data packets contain the media content. According to this particular embodiment, the cues may also be contained in data packets, which may be inserted in the media stream with the media content data packets. In this manner, a stream processing application or a user device may receive the cues with the media

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content in the media stream. This allows for precise timing control when the cues are processed, because the cues are contained together with the media content in a common media stream. This prevents separation of the cue from its associated media content, thereby preventing the cue's from being lost and eliminating the cumbersome process of having to match cues received from one data stream with media content received from another media content stream.

Flavin fails to teach "embedding the cue" into a "media stream with the media content to provide precise time synchronization for processing of the media stream," as recited by independent claims 1, 13, and 16. The Office Action alleges that Flavin teaches the announcements 115 to be included and transmitted in the content stream 112 in column 5, lines 32-53. However, the cited passages merely describe the content of an announcement 115. For instance, column 5, lines 47-50 states that the content stream 112 is a broadcasted television and that the announcements 115 contain a segment identifier section 320, which contains information allowing the announcements 115 to be matched to the media content within all hours of broadcasted television. Moreover, the announcements 115 contain a media content ID 322, identifying which media content stream the announcement applies to. Thus, the announcements 115 of Flavin are not embedded in, or even transmitted with, the media content stream 112, because the announcements 115 require a media content ID to allow the later-received announcement 115 to be matched to the previously-received media content stream 112. In contrast to the system of Flavin, the cues claimed herein are embedded in the media stream with the media content. By embedding the cues in the media stream with the media content, matching cues to media content may not be needed.

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Figures 1 and 2 of Flavin graphically illustrate the transmission of announcements 115 in a separate stream, independent from, and not associated with, the media content stream. For instance, Figure 1 illustrates people 111 receiving a media content stream 112. The people 111 create the announcements 115 on personal computers 110 by viewing the media content stream 112 and generating the announcements 115. The announcements 115 are then sent from the personal computers 110 of the people 111 over network 120 to various media devices of end users 155 where the announcements 115 may be processed. The end users 155 receive the media content from a separate and distinct media stream (not shown) from the stream carrying the announcements 115.

Similarly, Figure 2 illustrates a more detailed block diagram of the person 111 generating announcements at the person's 111 personal computer 110. As Figure 2 depicts, the person 111 may view media content from a media content stream 112 or may receive media content from a communications link 220. In either situation, as both Figures 1 and 2 depict, only the announcements 115 are transmitted to end users 155 via the network 120. Therefore, the end users 155 must receive media content from another source, via another network, and in another stream. Thus, the announcements 115 of Flavin are not embedded in the media content stream.

In addition, in column 7, lines 2-12, Flavin discloses that announcements 115 are received by the end users 155 after the event in the content stream has occurred. Flavin states that this lag time is "usually good enough." In other words, Flavin acknowledges that the announcements are received at the end user after the media content is received by the end user. As set forth above, however, independent claims 1, 13, and 16 recite that the embedded cues claimed herein provide "precise time synchronization for

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processing of the media stream.” The system of Flavin is incapable of providing precise time synchronization, because the announcements 115 of Flavin are generated by a third party, independent from the provider of the media content and are received after the media content. Therefore, Flavin fails to teach this feature of the claims.

Flavin also discloses the creation of descriptive information or descriptions 250. However, Flavin discloses that these descriptors are created and transmitted in the same manner as the announcements 115 (see column 3, lines 21-22). Flavin makes a passing statement that descriptors 250 may be associated with content streams. However, Flavin is referring to actual media content, such as Neilson ratings. For instance, Figure 2 shows the descriptors 250 as media content displayed on a media device as media content. Therefore, the descriptors 250 of Flavin are not equivalent to the instantly claimed cues, because they do not describe an “event,” as recited in independent claims 1, 13, and 16. Instead, the descriptors 250 associated with the media content stream of Flavin are, in fact, media content themselves.

Accordingly, Flavin fails to teach all of the features of independent claims 1, 13, and 16, for at least the reasons set forth above. Therefore, withdrawal of this rejection and allowance of the claims is respectfully requested.

Claim Rejection Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of

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success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claim 12 was rejected under U.S.C. §103(a) as allegedly being unpatentable over Flavin in view of SMPTE.

This rejection is respectfully traversed because neither Flavin nor SMPTE, taken alone or in combination, teach or suggest the features of independent claim 1, for the reasons set forth above. Therefore, claim 12 is at least allowable by virtue of its dependence on allowable claim 1.

Accordingly, withdrawal of this rejection and allowance of the claims is respectfully requested.

Claims 19-22

Claims 19-22 were rejected under U.S.C. §103(a) as allegedly being unpatentable over Flavin in view of Sequeira.

This rejection is respectfully traversed because neither Flavin nor Sequeira, taken alone or in combination, teach the features of independent claim 16, for the reasons set forth above. Therefore, claims 19-22 are at least allowable by virtue of their dependence on allowable claim 16.

Accordingly, withdrawal of this rejection and allowance of the claims is respectfully requested.

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Claim 25

Claim 25 was rejected under U.S.C. §103(a) as allegedly being unpatentable over Flavin.

This rejection is respectfully traversed because Flavin fails to teach or suggest the features of independent claim 1, for the reasons set forth above. Therefore, claim 25 is at least allowable by virtue of its dependence on allowable claim 1.

Accordingly, withdrawal of this rejection and allowance of the claims is respectfully requested.

Claims 29-37

Claims 29-37 were rejected under U.S.C. §103(a) as allegedly being unpatentable over Flavin in view of Reynolds.

This rejection is respectfully traversed because neither Flavin nor Reynolds, taken alone or in combination, teach the features of independent claim 29. For instance, Flavin fails to teach or suggest "embedding said cue packet in said media stream with the media program," for the reasons set forth above. Reynolds fails to cure the deficiencies of Flavin.

Accordingly, Flavin in view of Reynolds fails to teach all of the features of independent claim 29, for at least the reasons set forth above. Therefore, withdrawal of this rejection and allowance of the claims is respectfully requested

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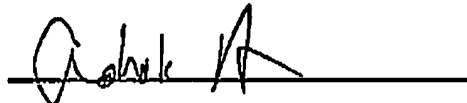
In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: January 8, 2007

By



Ashok K. Mannava
Registration No.: 45,301

MANNAVA & KANG, P.C.
8221 Old Courthouse Road
Suite 104
Vienna, VA 22182
(703) 652-3820
(703) 865-5150 (facsimile)